

California Regional Water Quality Control Board
Santa Ana Region
Staff Report
April 30, 2004

ITEM: 16

SUBJECT: Order No. R8-2004-0036 Affirming Administrative Civil Liability Complaint No. R8-2004-0023, Holliday Rock Company, Incorporated, Irvine, Orange County (*Postponed from the March 12, 2004 Board Meeting*)

BACKGROUND

On February 11, 2004, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2004-0023 (copy attached) to Holliday Rock Company, Inc. (Holliday Rock) for alleged violations of the State General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$70,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Holliday Rock.

ACL No. R8-2004-0023 was issued by the Executive Officer to Holiday Rock for violating Section 13376 by discharging pollutants (wash water containing concrete wastes) without having filed a report of the discharge and violating the General Permit by not developing and effectively implementing BMPs to reduce the discharge of pollutants and eliminate unauthorized non-storm water discharges, and discharging unauthorized non-storm water.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee with the State Water Resources Control Board. Holliday Rock filed a NOI and obtained coverage under the General Permit for this facility on January 23, 2003, WDID 8 30I017794. The facility is located at 16191 Construction Circle East in the City of Irvine.

On November 7, 2000, as part of an extended surveillance/inspection effort focusing on Construction Circle, staff from the City of Irvine, Orange County Public

Facilities and Resources Department and Board staff visited the Holliday Rock facility. Prior to entering the facility, it was noted that vehicle wash water had been allowed to run off the facility and discharge into the street. Contact was made with facility staff, including Mr. Jim Anderson, and a request was made to review the facility Storm Water Pollution Prevention Plan (SWPPP). Facility staff were unable to produce any documents pertaining to the storm water program at that time. During a physical inspection of the facility, it was noted that only minimal Best Management Practices (BMPs) were implemented to prevent the commingling of wastewater and other pollutants with storm water and to prevent non-storm water runoff from the facility. Facility staff were informed that unauthorized non-storm water discharges from the facility were a violation of the General Permit. Facility staff were also informed that based on site topography, the primary BMP implemented at the facility exit (a six-inch wide swale) was inadequate to control runoff of contaminated storm water and unauthorized non-storm water from the facility. A Pollution Investigation/Notification Request Form was completed by County personnel and a copy was given to facility staff. The correction required was to "... contain water onsite and train employees."

On January 7, 2003, Board staff conducted an inspection of the facility. Upon approaching the facility, Board staff observed Mr. Jim Anderson, now the plant manager, washing down the entrance/exit with a high volume/high pressure hose to remove concrete spillage. Discharge from this activity was overwhelming the storm swale and on-site wastewater retention system and was entering the street. Staff informed the Mr. Anderson that the unauthorized non-storm water discharge was a violation of the General Permit and that it must cease immediately. An inspection of the facility indicated several major problems including: evidence of previous discharges to the adjacent property located to the west of the facility; a wastewater holding pond located in the rear of the facility with inadequate BMPs to prevent wastewater from migrating off the facility; and an undersized wastewater retention/storm swale system. Staff again requested to review the SWPPP and monitoring plan but site personnel were unable to produce any documentation that pertained to the storm water program. Staff again discussed the requirements of the permit in depth with site personnel and the importance of implementing appropriate BMPs.

On January 10, 2003, staff re-inspected the facility. Again, Mr. Anderson, the plant manager, was washing concrete spillage off the driveway and the flow was overwhelming the water retention system at the entrance/exit of the facility and the resulting runoff was entering the street. Again, the plant manager was informed that the unauthorized non-storm water discharge was prohibited. Further, based on a review of the State Board database by staff, it was discovered that a Notice of Intent had never been filed for this facility. Therefore the plant manager was instructed to immediately file a Notice of Intent and cease the prohibited discharge of wash water.

On January 23, 2003, a Notice of Intent was submitted by the facility operators. Prior to that date, the facility had been in operation for at least 808 days, without coverage under the General Permit.

On August 13, 2003, staff conducted a drive-by inspection of the facility. As before, staff observed an unauthorized non-storm water discharge from the facility entrance/exit into the street. Due to time constraints, no contact was made with facility personnel.

On September 8, 9 and 19, 2003, drive-by inspections were performed by the City of Irvine Code Enforcement Unit. On each of these three occasions, the City inspectors noted that the same wash down procedures and runoff to the street were still occurring. Photos and email were sent to Board staff for follow-up enforcement.

Holliday Rock violated Water Code Section 13376 by discharging pollutants without having filed a report of the discharge (a NOI in this case) and Holliday Rock violated General Permit Provision A.1 ("...materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited.").

Pursuant to Water Code Section 13385(c)(2), civil liability may be administratively imposed for the preceding violations by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each violation that occurs each day. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The volume of the unauthorized discharge could not be accurately assessed, but was estimated to be less than 1,000 gallons. Therefore the maximum civil liability that can be imposed is \$70,000 for seven days of violation.

The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger operated without having obtained coverage under the General Permit. Once permitted, the discharger continued to discharge high pH, unauthorized non-storm water by not implementing adequate BMPs, in spite of repeated notices by Board staff to stop such discharges.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any evidence to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

The discharger has received a Notice of Violation for inadequate BMP implementation at another facility and a Notice of Non-Compliance for late submittal of the 2002-2003 Annual Report for the Irvine facility.

4. Degree of Culpability

The discharger is entirely culpable for the violations.

5. Economic Benefit or Savings, if any, Resulting from the Violations

The discharger saved approximately \$2,000 by not obtaining coverage under the General Permit for two years and approximately \$5,000 by not properly developing, implementing and maintaining an adequate SWPPP and by not implementing proper BMPs.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board adopt Order R8-2004-0036, affirming the assessment of \$70,000 specified in Administrative Civil Liability Complaint No. R8-2004-0023 issued by the Executive Officer on February 11, 2004.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Order No. R8-2004-0036 (revised)
)	for
Holliday Rock Company, Inc.)	Administrative Civil Liability
2193 West Foothill Blvd.)	
Upland, CA 91786)	
<u>Attention: Mr. John Holliday</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on April 30, 2004 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2004-0023, dated February 11, 2004, and on the recommendation for the imposition of administrative civil liability pursuant to Water Code Section 13385 in the amount of \$ 70,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). Holliday Rock Company, Incorporated (Holliday Rock) operated its facility at Construction Circle in the City of Irvine without obtaining coverage under the Permit at least from November 7, 2000 to January 23, 2003 thereby violating Section 13376 of the Water Code. Section 13376 of the Water Code requires that any person discharging or proposing to discharge pollutants to the navigable waters of the United States, within jurisdiction of this state, shall file a report of the discharge in compliance with Section 13260 of the Water Code at least 180 days prior to the discharge. Holliday Rock obtained coverage under the Permit on January 23, 2003, WDID 8301017794. The Permit requires Holliday to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) that includes Best Management Practices (BMPs) that achieve the Best Available Technology/Best Conventional Technology (BAT/BCT) standard. The Permit also prohibits the discharge of materials other than storm water, with very limited exceptions.
2. On November 7, 2000, a joint inspection of the Holliday Rock site (facility) was conducted by Orange County staff and Board staff. Prior to entering the facility, it was noted that vehicle wash water had been allowed to run off the facility and discharge into the street. Facility staff were unable to produce any documents pertaining to the storm water program at that time. Facility staff were informed that unauthorized non-storm water discharges from the facility were a violation of the Permit and that based on site topography, the primary BMP implemented at the facility exit (a six-inch wide swale) was inadequate to control runoff of contaminated storm water and unauthorized non-storm water from the facility. A Pollution Investigation/Notification Request Form was completed by County personnel and a copy was given to facility staff. The correction required was to "... contain water onsite and train employees."

3. On January 7 and 10, 2003, Board staff re-inspected the facility. Each time, Mr. Anderson, the plant manager, was washing concrete spillage off the driveway and the flow was overwhelming the water retention system at the entrance/exit of the facility and the resulting runoff was entering the street. Each time, the plant manager was informed that the unauthorized non-storm water discharge was prohibited and during the January 10, 2003 inspection, Board staff determined that Holliday Rock had not filed for coverage for this facility under the Permit, and the plant manager was instructed to immediately file a Notice of Intent and cease the prohibited discharge of wash water.
4. On January 23, 2003, a Notice of Intent was submitted by the facility operators, at least 808 days after commencement of industrial activities at this facility.
5. On August 13, 2003, Board staff conducted a drive-by inspection of the facility. As before, Board staff observed an unauthorized non-storm water discharge from the facility entrance/exit into the street. Due to time constraints, no contact was made with facility personnel.
6. On September 8, 9 and 19, 2003, drive-by inspections were performed by the City of Irvine Code Enforcement Unit. On each of these three occasions, the City inspectors noted that the same wash down procedures and runoff to the street were still occurring. Photos and email were sent to Board staff for follow-up enforcement.
7. Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) per day for each violation. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.
8. On February 11, 2004, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2004-0022 to Holliday Rock, proposing that the Board impose civil liability in the amount of \$70,000 on Holliday Rock for the violations cited above.
9. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on Holliday Rock Company, Incorporated, in the amount of \$70,000 as proposed in Complaint No. R8-2004-0023 for the violations cited, payable as set forth below.

1. Holliday Rock shall pay the entire amount due to the State Water Resources Control Board by June 1, 2004.

2. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 30, 2004.

Gerard J. Thibeault
Executive Officer

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. R8-2004-0023
)	for
Holliday Rock Company, Inc.)	Administrative Civil Liability
2193 West Foothill Blvd.)	
Upland, CA 91786)	
<u>Attention: Mr. John Holliday</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Holliday Rock Company, Inc. (Holiday Rock) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385 (c) of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on March 12, 2004 at the Orange County Sanitation District facility in Fountain Valley. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Holliday Rock, a concrete products company, located at 16191 Construction Circle East in the City of Irvine, California (hereinafter facility), is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 830S017794.
5. Holliday Rock is alleged to have violated Water Code Section 13376 by discharging pollutants without having filed a report of the discharge. Holliday Rock is also alleged to have violated Provision A.1 ("...materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited."). Pursuant to Water Code Section 13385 (a)(1) and (2), civil liability may be imposed for the preceding violations.
6. This Complaint is based on the following facts:

filed for this facility. Therefore the plant manager was instructed to immediately file a Notice of Intent and cease the prohibited discharge of wash water.

- d. On January 23, 2003, a Notice of Intent was submitted by the facility operators. Prior to that date, the facility had been in operation at least 808 days without coverage under the General Permit.
 - e. On July 24, 2003, a Notice of Non-Compliance was issued to the facility for failure to submit an Annual Report for the 2002/3 reporting period, which ends on June 30, 2003. Facility operators submitted their Annual Report on August 7, 2003. The report indicated that storm water sampling was not conducted during 2002/3 as the facility only began implementation of their SWPPP in February 2003, facility staff were not knowledgeable regarding sampling protocols, and appropriate sampling equipment was not available at the facility. Further, the facility operator had contracted with a consultant to monitor storm water discharges.
 - f. On August 13, 2003, staff conducted a drive-by inspection of the facility. As before, staff observed an unauthorized non-storm water discharge from the facility entrance/exit into the street. Due to time constraints, no contact was made with facility personnel.
 - g. On September 8, 9 and 19, 2003, drive-by inspections were performed by the City of Irvine Code Enforcement Unit. On each of these three occasions, the City inspectors noted that the same wash down procedures and runoff to the street were still occurring. Photos and email were sent to Board staff for follow-up enforcement.
 - h. A Notice of Violation was issued to Holliday Rock dated October 21, 2003.
7. Holliday Rock violated Section 13376 by discharging pollutants (wash water containing concrete wastes) without having filed a report of the discharge. Holliday Rock violated the General Permit by not developing and effectively implementing BMPs to reduce the discharge of pollutants and eliminate unauthorized non-storm water discharges, and discharging unauthorized non-storm water.
8. Section 13385(a)(1) provides that any person who discharges pollutants without having filed a report of the discharge shall be civilly liable. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.

E. Staff Costs	Regional Board staff spent approximately 30 hours investigating this incident (@\$70 per hour, the total cost for staff time is \$2,100).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.


After consideration of these factors, the Executive Officer proposes that civil liability be imposed on Holliday Rock in the amount of \$70,000 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check or money order payable to the State Water Resources Control Board for the amount of civil liability proposed under Paragraph 12, above, to Sacramento in the enclosed preprinted envelope.

If you have any questions, please contact Aaron Buck, at (909) 782-4469 or Mark Smythe at (909) 782-4998. For legal questions, contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

2-11-04
Date


Gerard J. Thibeault
Executive Officer



State Water Resources Control Board



Terry Tamminen
Secretary for
Environmental
Protection

*The energy challenge facing California is real.
Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at <http://www.swrcb.ca.gov>*

**Arnold
Schwarzenegger**
Governor

To:

HOLLIDAY ROCK CO,INC
2193 W FOOTHILL BLVD
UPLAND, CA 91786
ATTN: Mr. John Holliday

Invoice No: 44621

Invoice Date: 02/10/2004

Enforcement Action ID: 82994

Enforcement Order No: R8-2004-0023

INVOICE

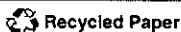
ACLCOMP

Milestone ID	Description	Amount	Due Date
54567	LIABILITY AMOUNT	\$70,000.00	
TOTAL AMOUNT DUE		\$70,000.00	

California Environmental Protection Agency



Retain above portion for your records



Please return bottom portion with your payment

HOLLIDAY ROCK CO,INC
2193 W FOOTHILL BLVD
UPLAND, CA 91786
ATTN: Mr. John Holliday

Make your check payable to:

State Water Resources Control Board

Milestone ID	Description	Amount	Due Date
54567	LIABDUE	\$70,000.00	
TOTAL AMOUNT DUE		\$70,000.00	

Mail payment to:

**SWRCB ACCOUNTING
ATTN: ENFORCEMENT
P. O. Box 100
SACRAMENTO, CA 95812-0100**

Amount Enclosed: \$ _____

PLEASE PRINT THE FOLLOWING INVOICE NUMBER ON YOUR CHECK: **44621**

Invoice Date: 02/10/2004

Enforcement Action ID: 82994

Enforcement Order No.: R8-2004-0023